

REMARKS

Claims 1-3, 5, 8 and 10-12 are pending in this application. By this Amendment, claims 1 and 11 are amended for clarity and new claim 12 is added. Support for the amendments can be found, for example, in the specification (see paragraphs [0020] and [0023]). No new matter is added.

The courtesies extended to Applicants' representative by Examiners Love and Blanchard at the interview held August 5, 2010, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' separate record of the interview.

In view of the foregoing amendments and the following remarks, reconsideration and allowance of the claims are respectfully requested.

I. Rejection Under 35 U.S.C. §103

The Office Action rejects claims 1-3, 5, 8, 10 and 11 under 35 U.S.C. §103(a) over U.S. Patent No. 6,242,299 to Gruning et al. ("Gruning"). This rejection is respectfully traversed.

Claim 1 recites:

A cosmetic comprising a hydroxyl compound obtained by reacting diglycerin with isostearic acid, and then reacting the obtained ester compound with dimer acid, wherein

- a molar ratio among diglycerin, isostearic acid, and dimer acid is 1.0 : 1.4 to 1.6 : 0.5 to 0.8;
- a hydroxyl value of the hydroxyl compound is in a range of from 30 to 80;
- a viscosity at 60 degrees C of the hydroxyl compound is in a range of from 2,500 to 10,000 mPa.s; and
- a number average molecular weight of the hydroxyl compound is in a range of from 2,000 to 7,000.

(Emphasis added). Claim 11 recites similar features. Gruning would not have rendered obvious each and every feature of claims 1 and 11.

Gruning is directed to polyglycerol partial esters obtained by esterification of a polyglycerol mixture with fatty acids (Gruning, col. 2, lines 14-18). Specifically, Gruning discloses polyglycerols having the following oligomer distribution: 1) glycerol (0 to 30 wt.%); 2) diglycerol (15 to 40 wt.%); 3) triglycerol (10 to 55 wt.%); 4) tetraglycerol (2 to 25 wt.%); and 5) pentaglycerol and higher (0 to 15 wt%) (Gruning, col. 3, lines 25-32). Of the various polyglycerol components listed above, triglycerol and tetraglycerol are necessary components in the polyglycerol of Gruning, as discussed during the interview. Therefore, Gruning fails to disclose cosmetic comprising a hydroxyl compound obtained by reacting diglycerin with isostearic acid, wherein a molar ratio among diglycerin, isostearic acid, and dimer acid is 1.0 : 1.4 to 1.6 : 0.5 to 0.8, as recited in claims 1 and 11. Instead, Gruning requires at least triglycerol and tetraglycerol present in the polyglycerol of Gruning, which would require a substantial amount of diglycerol to be added to the polyglycerol to meet the claimed range of diglycerin, isostearic acid, and dimer acid.

Further, Gruning fails to provide any reason or rationale for one of ordinary skill in the art to have modified the polyglycerol composition of Gruning by removing triglycerol, tetraglycerol, glycerol and any pentaglycerols and higher, in effect replaced the polyglycerol of Gruning with diglycerol (diglycerin) to obtain a molar ratio among diglycerin, isostearic acid, and dimer acid is 1.0 : 1.4 to 1.6 : 0.5 to 0.8, as recited in claims 1 and 11.

In support that the composition of claims 1 and 11 would not have been rendered obvious by Gruning, a Declaration Under 37 C.F.R. §1.132 of Naoki Sasaki and Mari Yoshida (“Declaration”) showing the advantageous and unexpected results of the composition of claims 1 and 11 is hereby submitted. This Declaration was discussed during the interview.

As described in the Declaration, experimental tests were conducted on three compositions: (1) HAILUCENT, an Example according to Preparation Example 3 of the

specification; (2) Lot 100407, a Comparative Example that is representative of Gruning; and (3) ISOLAN® PDI, a Comparative Commercial Example of Gruning. The compositions are summarized in Table 1 on the following page.

Table 1
Experimental Compositions

COMPOSITION		DESCRIPTION
1	<p style="text-align: center;">HAILUCENT</p> <p>Example according to Preparation Example 3 of the Specification</p>	<p>HAILUCENT is a product of Kokyu Alcohol Kogyo Co., Ltd</p> <p>HAILUCENT was prepared in a manner identical to Preparation Example 3 of the present specification, except that the diglycerol used was “Diglycerin 801” ex. Sakamoto Yakuhin Kogyo Co., Ltd., instead of K COL II (see specification, paragraphs [0035] and [0036]).</p> <p>Diglycerin 801 is equivalent to K COL II and was used because K COL II is no longer being produced (see specification, paragraph [0023]).</p> <p>The isostearic acid, “isostearic acid EX”, used in “HAILUCENT” is a purified one from Prissoline 3507, ex. Unichema; and the dimer acid, “PRIPOL1009”, used in “HAILUCENT”, has an average degree of polymerization of 2.0 (almost pure).</p> <p>The mole ratio of diglycerin : isostearic acid : dimer acid in “HAILUCENT” is 1: 1.5: 0.65.</p>
2	<p style="text-align: center;">Lot 100407</p> <p>Comparative Example of Gruning</p>	<p><i>Please see Declaration for synthesis of Lot 100407</i></p>
3	<p style="text-align: center;">ISOLAN® PDI</p> <p>Comparative Commercial Example of Gruning</p>	<p>ISOLAN® PDI is a product of Goldschmidt AG, the assignee of Gruning (U.S. Patent No. 6,242,499).</p> <p>The term “ISOLAN® PD1” is the trade name for the INCI/CTFA name: diisostearoyl polyglyceryl-3 dimer dilinoleate.¹</p>

¹ see, e.g. http://www.manufacturingchemist.com/company/single_company/Evonik_Goldschmidt_GmbH/46023 (last visited: 15 May 2010).

The number average molecular weight and viscosity at 60°C were measured for each composition. Additionally, five panelists evaluated the compositions removal with water. Gloss properties were also measured for each of the three compositions.

The results are summarized in Table 2 as show below.

Table 2

Number Average Molecular Weight, Viscosity, Removal with Water and Gloss				
Experimental Composition	Number average molecular weight	Viscosity at 60°C; [mPa.s]	Removal with Water	Gloss
HAILUCENT Example According Preparation Example 3 of the Specification	4936	2940	“strong remain” by all of the five panelists	79
Lot 100407 Comparative Example of Gruning	2927	909	“no remain” by all of the five panelists	70
ISOLAN® PDI Comparative Commercial Example of Gruning	2856	900	“no remain” by all of the five panelists	68

As shown above in Table 2, the viscosity of HAILUCENT is **223.4% greater** than the viscosity of Lot 100407, the Comparative Example of Gruning, and **226.7% greater** than ISOLAN® PDI, the commercial embodiment of Gruning. The gloss of HAILUCENT is also **12.8% greater** than the gloss of Lot 100407, and **16.1% greater** than ISOLAN® PDI. In addition, HAILUCENT also performed superior with respect to the removal with water test

conducted by five panelists, yielding a "strong remain" of the composition from all five panelists, as shown above. The sizeable difference with respect to viscosity, gloss and improvement in removal with water that was achieved as a result of selecting diglycerin, as recited in claims 1 and 11, over other higher and lower order glycerol components was unexpected from similar compositions that were prepared with a polyglycerol comprised of triglycerol and tetraglycerol, glycerol and pentaglycerols and higher. Furthermore, Gruning provides no reason or rationale for one of ordinary skill in the art to have modified the reference in the manner necessary to have obtained the composition recited in claims 1 and 11 with any reasonable expectation of success.

In view of the foregoing, Gruning would not have rendered claims 1 and 11 obvious. The remaining claims variously depend from claim 1 and, likewise, would not have been obvious over the applied reference for at least the reasons set forth above, as well as for the additional features they recite.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

II. New Claim

By this Amendment, new claim 12 is added. New claim 12 depends from claim 1 and, thus, is patentable for at least the reasons that claim 12 is patentable, as well as for the additional features it recites. New claim 12 positively recites a cosmetic composition wherein the hydroxyl compound is obtained by reacting a mixture consisting of diglycerin with isostearic acid, and then reacting the obtained ester compound with dimer acid. Gruning fails to disclose, and would not have rendered obvious, a composition wherein only diglycerin (diglycerol) is reacted with isostearic acid, as recited in claim 12.

Prompt examination and allowance of new claim 12 are respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Sarah Lhymn
Registration No. 65,041

WPB:SQL/hs

Attachments:

Petition for Extension of Time
Declaration Under 37 C.F.R. §1.132

Date: August 9, 2010

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry of this filing; Charge any fee due to our Deposit Account No. 15-0461</p>
--